

SALES TAX DIVISION

INFORMATION BULLETIN #1FB

DECEMBER, 2002

(REPLACES BULLETIN #1FB ISSUED APRIL 8, 2002)

DISCLAIMER: Information Bulletins are intended to provide nontechnical assistance to the general public. Every attempt is made to provide information that is consistent with the appropriate statutes, rules, and court decisions. Any information that is inconsistent with the law, regulations, or court decisions is not binding on either the Department or the taxpayer. Therefore, information provided in this Bulletin should only serve as a foundation for further investigation and study of the current law and procedures related to its subject matter.

SUBJECT: COUNTY FOOD AND BEVERAGE TAX

REFERENCE: IC 6-9-12, IC 6-9-20, IC 6-9-21, IC 6-9-23, IC 6-9-24, IC 6-9-25, IC 6-9-26, IC 6-9-27, and IC 6-9-33

This information bulletin is directed to retail merchants responsible for collecting the county food and beverage tax. The purpose of this information bulletin is to assist retail merchants in the proper application of the food and beverage tax. In counties adopting a food and beverage tax the tax equals one percent (1%) of the gross retail income received from food and beverage transactions.

LOCATION OF TRANSACTION

This tax applies only to transactions taking place in counties adopting the tax. A retail merchant that does catering in counties who have not adopted the tax will not collect the tax on transactions in those counties.

MEALS

Sales of meals, including food and beverages, which are sold by a retail merchant for consumption at the merchant's business location or at a location where the merchant provides the meal, are subject to the tax.

All sales of food and beverage as a meal or for immediate consumption made by a retail merchant are subject to the tax. The tax shall apply to all sales of food and beverages which are packaged, prepared, or sold as meals, or in a form which normally may be consumed at or near the premises, whether or not such food and beverages are actually consumed on the premises. This includes street vendor sales, catering sales, and sales by grocery stores.

Food and beverage tax must be collected on any unitary transaction of fifty cents (\$0.50) or more. The amount shown on a single check is considered to be a single sale even though food or drink is consumed by more than one person. Payment by one person of items listed on more than one check is also a single sale. Tax is computed on the single sale total.

The Indiana sales tax and county food and beverage tax cannot be included in the selling price. The taxes may be combined after computation as one separately stated tax. The merchant cannot represent that the tax is being absorbed by the merchant.

Food and beverage sold to employees is subject to both the sales tax and the food and beverage tax. If food and beverage is given to an employee; the sales tax, use tax, and food and beverage tax do not apply to the gift.

FOOD AND BEVERAGE SOLD FOR IMMEDIATE CONSUMPTION

Sales of food and beverage which ordinarily are sold for immediate consumption at or near the premises of the seller are taxable even though such food and beverage are sold on a "take-out" or "to go" order and are actually bagged, packaged, or wrapped and taken from the premises of the seller. Where and when the customer actually eats such food is immaterial. Accordingly, sales by restaurants, bars, taverns, cafeterias, lunch counters, grocery stores, drive-ins, roadside ice cream and refreshment stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, or similar facilities of meals, sandwiches, hamburgers, hot dogs, french fries, fried chicken, fish and chips, pizza, potato salad, cole slaw, salads, popcorn, sundaes, cones and cups of ice cream, milk shakes, soft drinks, and similar ready-to-eat food and beverage items are taxable, regardless whether sold by such establishments for consumption on the premises or on a "take-out" or "to go" basis. Alcoholic beverages sold as part of a meal or by the drink are taxable. Sales of prepared food which requires heating is subject to the food and beverage tax if the

merchant provides equipment for heating. For example, sales of individual serving size popcorn or french fries are taxable if the merchant provides a microwave for preparing the food, regardless of whether the customer uses the equipment.

Certain items which are not for immediate consumption, but are subject to sales tax are not subject to the food and beverage tax. For example, soft drinks and alcoholic beverages purchased in packaged form (i.e., 6 packs, bottles, cases) are not subject to the food and beverage tax. Vending machine sales are not subject to food and beverage tax.

Any food and beverage which is prepared to the order of the purchaser or which is cooked and maintained at or near the cooking temperature prior to sale shall be considered to be sold as a meal or for immediate consumption and shall be subject to the food and beverage tax.

COMBINATION BUSINESS

Where a person operates a combination type business at one location such as an eating place combined with a grocery line, or an eating place combined with a donut or pastry shop, sales by such retailer of non-taxable grocery items are non-taxable for purposes of the food and beverage tax when sold for later preparation and consumption by the consumer. The method used in distributing these items, including the kind and size of the order and the container used, will be considered in determining whether the items are sold for immediate consumption. For example, bulk sales of donuts or other assorted pastries, sales of whole pies or cakes, and bulk sales of ice cream are non-taxable as they are not sold for immediate consumption. However, individual orders (i.e., an order of coffee and donuts, a piece of pie and milk, or a cup of ice cream) are taxable regardless whether sold for consumption on the premises or sold on a "take-out" basis for off-premises consumption.

Grocery stores which sell food for immediate consumption (i.e., salad bars, fried chicken, submarine sandwiches, pizza) must collect the food and beverage tax on these sales.

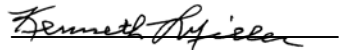
CATERERS

The law provides that the sale of food and beverage shall be taxable whether such food and beverage is served on or off the premises of the retailer. Accordingly, the sale of food or meals by caterers is subject to sales tax.

Tax applies to the entire charges made by caterers for serving meals, food and drink, inclusive of charges for food, the use of dishes, silverware, glasses, chairs, tables, etc., used in connection with serving meals, and for labor of serving meals.

REGISTRATION, SALES AND ACCOUNTING

All retail merchants are required to file an application for a registered retail merchants certificate for each location for the purpose of collecting Indiana sales tax. There is no additional registration requirement for merchants who collect the county food and beverage tax. However, these merchants must contact the Taxpayer Services Division for reporting forms for the county food and beverage tax.

A handwritten signature in cursive script, appearing to read "Kenneth L. Miller", followed by a horizontal line.

Kenneth L. Miller
Commissioner